



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2013-0147]**

**Driver Qualifications: Skill Performance Evaluation; Virginia Department of Motor Vehicles' Application for Exemption**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of application for exemption; request for public comment.

**SUMMARY:** FMCSA announces receipt of an application for exemption from the Virginia Department of Motor Vehicles (Virginia), on behalf of truck and bus drivers who are licensed in the Commonwealth of Virginia and need a Skill Performance Evaluation (SPE) certificate from FMCSA to operate commercial motor vehicles in interstate commerce. The exemption would enable Virginia-licensed drivers subject to the Federal SPE requirements under 49 CFR 391.49, to fulfill the Federal requirements with a State-issued SPE. The State-issued SPE would be based on standards, processes and procedures comparable to those used by FMCSA, and the State would maintain copies of all evaluation forms and certificates issued to enable FMCSA to conduct periodic reviews of the program.

**DATES:** Comments must be received on or before [Insert 30 days after date of publication in the FEDERAL REGISTER].

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) number FMCSA-2013-0147 by any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- Mail: Docket Management Facility, U.S. Department of Transportation, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001.
- Hand Delivery: Ground Floor, Room W12-140, DOT Building, 1200 New Jersey Avenue, SE. Washington, DC, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- Fax: 1-202-493-2251.

Instructions: Each submission must include the Agency name and docket number for this notice. For detailed instructions on submitting comments and additional information on the exemption process, see the “Public Participation” heading below. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the “Privacy Act” heading for further information.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or to Room W12-140, DOT Building, New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgement that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union,

etc.). You may review DOT's complete Privacy Act Statement for the FDMS published in the Federal Register published on January 17, 2008 (73 FR 3316) or you may visit <http://edocket/access.gpo.gov/2008/pdf/E8-785.pdf>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Eileen Nolan, Office of Carrier, Driver and Vehicle Safety, Medical Programs Division, (202) 366-4001, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

**SUPPLEMENTARY INFORMATION:**

**Background:**

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the Federal Register (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the Federal Register (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The

exemption may be renewed (49 CFR 381.300(b)).

### **Virginia's Exemption Application**

The Virginia DMV is requesting an exemption from 49 CFR 391.49 concerning FMCSA's SPE process for drivers who have experienced an impairment or loss of a limb, on behalf of commercial motor vehicle (CMV) drivers licensed in the Commonwealth of Virginia. Instead of requiring such drivers to apply to FMCSA for an SPE, Virginia would establish its own SPE program essentially identical to the current FMCSA program. Virginia would establish an application process modeled on the FMCSA process, and State personnel who have completed SPE training identical to that of FMCSA personnel currently administering the Federal SPE program would conduct the skill test following the same procedures and testing criteria used by FMCSA. If the driver passed the skill test, the State would issue the SPE certificate. Virginia would maintain records of applications, testing, and certificates issued for periodic review by FMCSA.

An exemption granted under the authority of 49 U.S.C. 31315(b) preempts State laws and regulations that conflict with or are inconsistent with the exemption. If FMCSA decided to grant Virginia's request, the exemption would amount to automatic Federal ratification of each State-issued SPE certificate and would therefore prohibit other jurisdictions from requiring a separate FMCSA-issued SPE. The State-issued certificate would be treated as if it had been issued by FMCSA. Virginia-licensed drivers who receive the State-issued SPE would be allowed to operate CMVs in interstate commerce, anywhere in the United States. A copy of the exemption application is included in the docket.

### **Request for Comments**

FMCSA requests public comments on Virginia's exemption application. The Agency will consider all comments submitted to the public docket referenced at the beginning of this notice and determine whether the exemption would achieve a level of safety equivalent to the Federal SPE process, and consistent with the statutory requirements for exemptions under 49 U.S.C. 31136(e) and 31315(b)(1),

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Larry W. Minor  
Associate Administrator for Policy

